

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3228 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

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SHIVAM GENERAL STORES, THRO' LALLUBHAI M GANDHI

Versus

STATE OF GUJARAT

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Appearance:

MR DD VYAS for Petitioners

MR.UDHAY BHATT, ASSTT. GOVT. PLEADER for Respondent

Nos.1, 2 AND 3.

MR PRANAV G DESAI for Respondent No. 4

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/12/97

ORAL JUDGEMENT (Per: C.K.Thakkar,J.)

This petition is filed by the petitioners for quashing and setting aside notification Annexure-B issued

under Sec.4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and notification Annexure-J issued under Sec.6 of the Act being illegal, ultra vires, unconstitutional and violative of fundamental rights of the petitioners.

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#. It is the case of the petitioners that they were having a land bearing City Survey no.3057/B admeasuring 83-61-30 sq. mtrs. and City Survey no.3055 admeasuring 76-92-39 sq. mtrs. in ward no.4 in Salabatpura Main Road, Surat. A notification under Sec.4 of the Act was issued on March 2, 1988 which was published in local newspapers on March 9, 1988 and March 12, 1988 respectively. It was published in Government Gazette on April 14, 1988. The factum of Sec.4 notification was notified on the site on April 19, 1988. Objections were invited under Sec.5-A of the Act. Since the petitioners were of the opinion that the land was not needed for public purpose and even otherwise, alternative lands were available, they submitted objections. They were considered by the Land Acquisition Officer and a report was submitted by him to the Government. After considering the report submitted by the Land Acquisition Officer as also the objections raised by the owners, the Government issued a notification under Sec.6 of the Act on April 15, 1989. Since a notification under Sec.6 was issued, the petitioners approached this Court by filing this petition which was admitted and ad-interim relief was granted. The matter is now called out for final hearing.

#. Mr.D.D.Vyas, learned senior advocate for the petitioners raised following three contentions:

- (1) The notification under Sec.6 of the Act was not issued within a period of one year from the publication of notification under Sec.4 of the Act and, hence, the proceedings were vitiated;
- (2) There is either violation of principles of natural justice or non-application of mind on the part of State Government before issuance of notification under Sec.6 and the proceedings were liable to be quashed and set-aside; and
- (3) The power of acquisition was exercised mala fide. Though alternative lands were available, in colourable exercise of power, acquisition proceedings have been initiated affecting poor persons who were occupying the land since many

years.

#. Mr. Udhay Bhatt, learned Asstt. Government Pleader for respondents nos. 1, 2 and 3 and Mr. P. G. Desai, learned counsel for respondent no. 4, Surat Municipal Corporation, on the other hand, supported the action taken by the authorities. They submitted that the proceedings had been initiated in accordance with the provisions of the Act. Notifications under Sec. 4 as well as under Sec. 6 were issued within the period stipulated under the Act and action has been taken in bona fide exercise of power after application of mind and after observing principles of natural justice. There is, therefore, no reason to interfere with the action and the petition deserves to be dismissed.

#. So far as the first point, i.e. gap of one year between notification under Sec. 4 and Sec. 6 is concerned, it was submitted that the notification under Sec. 6 was not issued within a period of one year. The notification under Sec. 4 was published in Official Gazette on April 14, 1988 and the period of one year would expire on April 14, 1989. Admittedly, a notification under Sec. 6 was issued on 15th April, 1989 i.e. beyond one year. In this connection, our attention was invited to a decision of the Supreme Court in Ranjit Kumar Ghosh and another Vs. Sirish Chandra Bose and others, AIR 1994 SC 1254. In that case, notifications under Sec. 4 were issued in November, 1971, December, 1973 and November, 1981 respectively, but notifications under Sec. 6 were issued after three years. Considering the said fact, the Supreme Court observed that in respect of those notifications which were published after the stipulated period, "the notifications under Sec. 4(1) shall stand lapsed".

#. In our opinion, however, ratio laid down in Ranjit Kumar Ghosh and another (supra) would not apply to the facts of the present case. In affidavit-in-reply filed by S. K. Patel, Land Acquisition Officer, it was stated that notice as provided under the Act was notified at the site on 19th of April, 1988. If this date is to be considered, obviously the notification under Sec. 6 was issued within a period of one year. In our view, submission of respondents is well founded. Sec. 4 provides various modes of publication of notification and one of such modes is publication of notification "at convenient place in the locality". Since it was one of the modes provided by the statute itself and at the site, the notification was published on 19th April, 1988, the material date for issuance of notification under Sec. 6

would be the last date on which the notification was published under Sec.4, i.e. April 19, 1988 and as the notification under Sec.6 was issued on April 15, 1989, it was issued within prescribed period of one year. We, therefore, do not see substance in the first contention and it is rejected.

#. On violation of principles of natural justice and non-application of mind on the part of State Government, it was contended by Mr.Vyas that after issuance of preliminary notification under Sec.4, objections were invited. The petitioners submitted objections which were considered by the Land Acquisition Officer. It was stated by Mr.Vyas that according to Land Acquisition Officer, there was no need to acquire land as other lands were available in nearby area. He, therefore, recommended to drop acquisition proceedings. Mr.Vyas submitted that even if it is conceded that after the recommendation made by the Land Acquisition Officer in favour of the objectors for dropping of proceedings, the State Government was of the view that the land was required for public purpose and it was open to it to take final decision, such decision could be taken only after extending opportunity of hearing and observing principles of natural justice. According to him, once a report was submitted by the Land Acquisition Officer in favour of the objectors upholding the contentions of the owners, no decision could be taken by the State Government under Sec.6 in violation of principles of natural justice. Alternatively, it was submitted that there was non-application of mind on the part of the State Government, in that looking to the affidavit-in-reply filed by the Land Acquisition Officer, an impression was sought to be created as if the Land Acquisition officer recommended against the petitioners and the report was for acquisition of land. For that our attention was invited to paragraph 6 of the counter wherein it was mentioned that after affording personal hearing to the objectors on June 30, 1989, the report was submitted by the Land Acquisition Officer on July 11, 1989. "Considering the public purpose involved in the acquisition, their objections were overruled". Mr.Vyas submitted that objections were not overruled by the Land Acquisition Officer. On the contrary, they were upheld and the proceedings were to be dropped. It was only the State Government which took the decision to acquire the land.

#. We do not see substance in this contention as well. So far as hearing and observance of principles of natural justice is concerned, the point is no longer rest

integra. In Abdul Hussain Tayabali etc. Vs. State of Gujarat and others, AIR 1968 SC 432, a similar contention was raised. It was argued that the State Government was bound to give an opportunity of being heard to the appellants before taking decision under Sec.5-A particularly when the report of the Land Acquisition Officer was against acquisition. Negativizing the contention and considering the ambit and scope of Sec.4, Sec.5-A and Sec.6, their Lordships held that inquiry under Sec.5-A was in the nature of administrative proceedings and the report to be submitted by the Land Acquisition Officer had merely recommendatory value and was not binding on the Government. It was observed;

"The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose or for the Company. It is then that Section 6 notification which declares that particular land is needed for either of the two purposes is issued. The Government thus had before it not only the opinion of Master but also all that the appellants had to say by way of objections against the proposed acquisition. The appellants, therefore,, had an opportunity of being heard. Neither Section 5-A nor any other provision of the act lays down that a second opportunity has to be given before issuance of section 6 notification" (emphasis supplied).

#. To us, the law is thus well settled and it is that only at one stage opportunity is to be afforded to the owner and/or occupier of the land to submit objections before the Land Acquisition Officer. It is an admitted fact that the Land Acquisition Officer has considered the objections. He has also afforded personal hearing and the report was forwarded to the State Government alongwith the objections submitted by the petitioners. On the basis of the report as also the objections, the final decision could be taken by the State Government, which was taken by it. No grievance can be made against such decision on the ground of violation of principles of natural justice.

##. We are also not impressed by the argument that there was non-application of mind on the part of the State Government. The State Government considered the matter in the light of recommendations made by the Land Acquisition Officer and considering the objections

submitted by the petitioners, arrived at a conclusion and a decision has been arrived at by the Government. The petitioners cannot make any complaint against such decision. We, therefore, do not see any substance in the second contention raised by Mr.Vyas.

##. Finally, it was contended that there is colourable exercise of power on the part of the authorities and the power has been exercised mala fide. The counsel contended that when other lands were available to the Corporation, no acquisition proceedings could have been initiated for acquiring land of the petitioners. The question is not as to whether it would be proper to acquire the land of the petitioners or other land was available to authorities. If the land is needed for public purpose and notifications were issued in accordance with law, in exercise of extraordinary powers under Sec.226 of the Constitution of India, this Court will not substitute its opinion for the opinion of the authority or to enquire into the wisdom of the authorities to acquire some other land. In affidavit-in-reply filed by J.M.Patel, Land Acquisition Officer of respondent No.4 Corporation, it was stated that land in question alongwith the land in possession of the Corporation had a "definite figure which could be used for parking complex". It was stated by the deponent that there was parking problem at the place as in the said area there were Zapa Bazar, Yarn Bazar, Fish market and commercial shops. Special importance was therefore given to parking which would enable easy vehicular traffic on roads. It was further stated that Surat Urban Development Authority (SUDA) had also kept the land under reservation in its development plan. The Land Acquisition Officer has also stated in his affidavit that to the west of the land in question, there is a road. On that road, rickshaws, scooters and motors are parked because in the nearby area there is fish market, many shops and commercial centres. If, taking into account all those considerations, the land of the petitioner was acquired, it cannot be said that the power has been exercised mala fide. The third contention also, has no force and is hereby negatived.

##. For the foregoing reasons, we do not see any ground to interfere with the notifications issued under Sec.4 and under Sec.6 of the Act. The petition deserves to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief stands vacated. In the facts and circumstances of the case, no order as to costs.

##. Mr.Vyas stated that ad-interim relief was granted in 1989 and is operative till today. The petitioners intend to approach the Apex Court. He, therefore, prayed that ad-interim relief may be continued for some time so as to enable the petitioners to approach higher forum. In our opinion, the prayer is reasonable. Ad-interim relief granted earlier is ordered to continue till February 28, 1998.

Sd/-

(C.K.Thakkar,J.)

Sd/-

22-12-1997 (R.P.Dholakia,J.)

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